

Message Text

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ACTION AF-18

INFO OCT-01 NEA-10 ADP-00 RSR-01 AID-20 EB-11 COME-00

OMB-01 TRSE-00 CIAE-00 DODE-00 PM-09 H-02 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12 /128 W

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R 240500 Z APR 73

FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC 6437

INFO AMEMBASSY ADDIS ABABA

AMEMBASSY AMMAN

AMEMBASSY BANGUI

AMEMBASSY BEIRUT

AMEMBASSY JIDDA

AMEMBASSY KAMPALA

AMEMBASSY FORT LAMY

AMEMBASSY KINSHASA

AMEMBASSY KUWAIT

AMEMBASSY NAIROBI

AMEMBASSY NOUAKCHOTT

AMEMBASSY RABAT

AMEMBASSY TRIPOLI

AMEMBASSY TUNIS

USINT CAIRO

C O N F I D E N T I A L SECTION 1 OF 2 KHARTOUM 0893

EO 11652: GDS

TAGS: PGOV, SU

SUBJ: SUDAN CONSTITUTION

REF: KHARTOUM 1685, DEC 14, 1972

1. BEGIN SUMMARY: PRESIDENT NIMAIRI HAS ACCEPTED DRAFT CONSTITUTION PREPARED OVER PAST SIX MONTHS BY PEOPLE' S ASSEMBLY. ASSEMBLY PROCEEDINGS MARKED BY MORE DEBATE THAN EXPECTED BY SKEPTICS. CONSTITUTION BILLED AS REFLECTING IDEALS MAY 1969 REVOLUTION AND SUDAN NATIONAL EXPERIENCE IN PROVIDING FOR UNITARY CONFIDENTIAL

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STATE (WITH CONFIRMATION REGIONAL ROLE FOR SOUTH), SINGLE PARTY STRUCTURE (SSU), SOME PARLIAMENTARY CHECKS AND JUDICIARY. MAIN CONTENTIOUS ISSUE WAS ROLE OF ISLAM WHICH RESOLVED BY MAKING IT " MAJORITY" BUT NOT " STATE" RELIGION. INDIVIDUAL

FREEDOMS AND SANCTITY OF CONSTITUTION GUARANTEED, BUT ULTIMATE APPLICATION RESTS ON EXTENT TO WHICH ANY ACTS INCONSISTENT MAY 1969 REVOLUTION WHOSE INTERPRETATION ESSENTIALLY PRESIDENTIAL PREROGATIVE. CONSTITUTION REPRESENTS SYMBOLIC ACHIEVEMENT FOR NIMAIRI REGIME IN SENSE THAT PREDECESSORS WERE UNABLE TO IMPLEMENT A CONSTITUTION BECAUSE OF POLITICAL STRIFE AND SOUTHERN REVOLT. ALTHOUGH PROVISIONS RETAIN OPPORTUNITY FOR OPPRESSION, GOOD SUDANESE COMMON SENSE EXPECTED PREVAIL (AT LEAST UNDER NIMAIRI). DOCUMENT DESCRIBED AS " PERMANENT" (SKPTICS STATE IT WILL LAST ONLY AS LONG AS REGIME) AND WILL BE EFFECTIVE WHEN PROMULGATED BY PRESIDENT (REPORTEDLY ON ANNIVERSARY MAY REVOLUTION, MAY 25). END SUMMARY.

2. THE SPEECH. AT CEREMONIAL CLOSING PEOPLE' S ASSEMBLY APRIL 14 (T CONVENED ON OCTOBER 12, 1972), PRES NIMAIRI PRAISED ASSEMBLY FULSOMELY IN DESCRIBING DRAFT CONSTITUTION AS BASED ON PRINCIPLES MAY REVOLUTION, PEOPLE' S DEMOCRACY AND COMBINATION REVOLUTIONARY WITH CONSTITUTIONAL " LEGALITY". HE REFERRED EUPHEMISTICALLY TO SOUTHERN SEMI- AUTONOMY BY NOTING CONSTITUTION EMBODIED " LIMITED SECTIONAL INTEREST WITHOUT PREJUDICE PUBLIC INTEREST". IN BUTTRESSING PRAGMATIC APPROACH, HE INDIRECTLY CRITICIZED COMMUNISM BY NOTING MAY 1969 REVOLUTION COMMITTED TO SOCIALISM " WITHOUT ANY ATTACHMENT TO THEORY OR DOGMA", IS NOT PROPAGATED BY " ELITE DEVOTED TO SPECIFIC POLITICAL CREED" AND DOES NOT CALL FOR ANY " DRASTIC IMPLEMENTATION BY A SOCIALLY DOWNTRODDEN MAJORITY SEEKING EMANCIPATION THROUGH ANNIHILATION ITS OPPRESSORS". PRESIDENT ALSO NOTED EMERGENCE " AUTHORITY" (BASED ON " WORKING FORCES" AS EXPRESSED THROUGH SUDAN SOCIALIST UNION (SSU)). PRES (AND ASSEMBLY SPEAKER) EMPHASIZED AT SEVERAL POINTS THAT ASSEMBLY HAD ENGAGED IN ACTIVE DEBATE, THEREBY FURNISHING VISIBLE EVIDENCE REGIME HAD NOT SOUGHT IMPOSE RESTRAINTS, DOMINATE PROCEEDINGS, SEEK FLATTERY NOR DISTORT " SOCIAL REALITIES" IN ORDER THAT " PEOPLE CHANT A RYTHMIC LITANY TO A UNIFORM ORCHESTRATION". HE ALSO NOTED, HOWEVER, THAT ASSEMBLY HAD BEEN " RESPONSIBLE" IN AVOIDING TEMPTATION SERVE AS " LEADING EDGE OF OPPOSITION" . IN CONCLUDING COMMENT, HE NOTED SUDAN CANNOT ACHIEVE DEVELOPMENT THROUGH " IDLE

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TALK AND EMPTY TONGUES", BUT ONLY THROUGH " SUSTAINED SELF- EFFORT ALL CITIZENS".

3. CONSTITUTION. CONSTITUTION CONSISTS OF 225 ARTICLES. PARTICULAR KEY ASPECTS ARE AS FOLLOW:

- A. THE STATE: UNITARY, DEMOCRATIC, SOCIALIST AND PART OF ARAB AND AFRICAN " ENTITIES"; SSU " SOLE POLITICAL ORGANIZATION"; SOUTHERN REGION ADMINISTRATION PART " ORGANIC LAW"; ARABIC OFFICIAL LANGUAGE (OTHERS PERMITTED).
- B. RELIGION: ISLAM " MAJORITY" RELIGION AND CHRISTIANITY " LARGE" RELIGION-- STATE SHALL ENDEAVOR " EXPRESS VALUES" OF EACH. OTHER " HEAVENLY RELIGIONS AND NOBLE SPIRITUAL BELIEFS",
- E. G. SOUTHERN ANIMISM, ALSO ACCEPTED AND STATE " SHALL NOT IMPOSE

RESTRICTIONS ON CITIZENS OR COMMUNITIES ON GROUNDS RELIGIOUS FAITH". RELIGIOUS PARA- MILITARY FORCES SPECIFICALLY PROHIBITED.

C. ECONOMY: " SOCIALIST SYSTEM" DIRECTED TOWARDS " SUFFICIENCY AND JUSTICE"; STATE SHALL OWN AND MANAGE " FUNDAMENTAL MEANS" PRODUCTION; IDENTIFIES ROLES FOR PUBLIC SECTOR, COOPERATIVE SECTOR, MIXED SECTOR AND PRIVATE SECTOR; PRIVATE SECTOR TO BE BASED ON " NON- EXPLOITING" PRIVATE OWNERSHIP WHICH STATE WILL " PROTECT, ENCOURAGE AND ORGANIZE".

D. FREEDOMS AND LAW: LARGE RANGE OF FREEDOMS AND SUBSERVIENCE TO RULE OF LAW OUTLINED (SEE PARA 5).

E. THE PRESIDENCY: PRESIDENT HAS ALL EXECUTIVE POWER AND " SHARES" LEGISLATIVE POWERS: SIX- YEAR TERMS WITH NO LIMITATION ON RE- ELECTION-- NOMINATION BY SSU; VICE PRESIDENT(S) APPOINTIVE; PRIME MINISTER " MAY" B APPOINTED BY PRESIDENT AND IS INDIVIDUALLY RESPONSIBLE TO PEOPLE' S ASSEMBLY; PRESIDENT MAY APPOINT 10 PERCENT OF ASSEMBLY DIRECTLY; RATIFIES TREATIES EXCEPT THOSE SPECIFICALLY RESERVED TO ASSEMBLY; MAY SEND ARMED FORCES ABROAD INDEPENDENTLY IF IN " PUBLIC INTEREST" OR RESPONSE " COUNTRY' S OBLIGATIONS"; MAY DISSOLVE ASSEMBLY WITH NEW ELECTIONS WITHIN SIXTY DAYS; MAY DECLARE STATE OF EMERGENCY AT OWN INITIATIVE FOR THIRTY DAYS (AND MAY EXTEND IF ASSEMBLY DISSOLVED).

F. THE ASSEMBLY: HAS LEGISLATIVE POWER " ALONG WITH PRESIDENT"; MODALITY OF ELECTIONS AND NOMINATION CANDIDATES ACCORDING TO " LAW" (YET TO BE DEVELOPED); MAY OVERRIDE PRESIDENTIAL VETO WITH TWO- THIRDS VOTE; PRESIDENT MAKES INITIAL ASSEMBLY RULES OF PROCEDURE (WHICH ASSEMBLY MAY AMEND); DELEGATES GRANTED IMMUNITY FROM PROSECUTION FOR STATEMENTS IN ASSEMBLY OR CONFIDENTIAL

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COMMITTEES; RIGHT OF INTERROGATION MINISTERS INCLUDING PRIME MINISTER ; TWO- THIRDS VOTE CAN RECOMMEND REMOVAL SPECIFIC MINISTERS OR NO- CONFIDENCE; ASSEMBLY HAS BUDGET RESPONSIBILITY, BUT CERTAIN FINANCIAL BILLS " NEED NOT NECESSARILY" BE APPROVED BY ASSEMBLY INCLUDING POTENTIALLY IMPORTANT ALLOCATIONS FOR PRESIDENT, JUDICIARY, PEOPLE' S ASSEMBLY AND FOREIGN DEBTS; ASSEMBLY MAY NOT ORIGINATE TAX BILLS WITHOUT PRIOR SUBMISSION TO PRESIDENT. PRESIDENT, ON OTHER HAND, MAY IMPOSE TAX PENDING ASSEMBLY APPROVAL OR REJECTION, BUT RETAINS TAX EARNED IN CASE REJECTION.

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R 240500 Z APR 73

FM AMEMBASSY KHARTOUM
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C O N F I D E N T I A L SECTION 2 OF 2 KHARTOUM 0893

G. JUDICIARY: " INDEPENDENT" BUT " DIRECTLY RESPONSIBLE"
TO PRESIDENT WHO APPOINTS, ASSIGNS, TRANSFERS AND REMOVES JUDGES
WITH RECOMMENDATIONS FROM " SUPREME JUDICIARY COUNCIL" TO BE
" ESTABLISHED" BY PRESIDENT.

H. LOCAL GOVERNMENT: PRESIDENT " ESTABLISHES" PROVISIONAL
EXECUTIVE COUNCILS WHO IN TURN " ESTABLISH" PEOPLE'S LOCAL
COUNCILS AND DEFINE ANY POWERS.

I. ESCAPE CLAUSE: ANY ACT INTENDED " WRECK CONSTITUTION",
" OVERTHROW MAY REVOLUTION" OR " OVERTHROW CONSTITUTIONAL
REPUBLICAN REGIME" IS HIGH TREASON.

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RM COMMENT: EMBASSY'S INITIAL ASSESSMENT IS THAT CONSTITUTION
WHEN PROMULGATED REPRESENTS SYMBOLIC ACCOMPLISHMENT FOR NIMAIRI
REGIME REFLECTING SETTLEMENT SOUTHERN PROBLEM AND ESSENTIALLY
PRAGMATIC APPROACH TO GOVERNMENT. IF NOTHING ELSE, IT FILLS
VOID WHICH ALL PREVIOUS REGIMES SINCE INDEPENDENCE FAILED TO DO.
CONSTITUTION LACED WITH REFERENCES TO VAGUE GOALS AND IDEALS
MAY 19 69 REVOLUTION. INTERPRETATION WILL BE DE FACTO PREROGATIVE
OF PRESIDENT, THEREBY FURTHER CONFIRMING (NOT
UNSURPRISINGLY) THAT ULTIMATE POWER REMAINS WITH HIM, HIS ADVISORS
AND, EVENTUALLY, SSU SHOULD IT BECOME SUFFICIENTLY ESTABLISHED
AND ORGANIZED. IT CONTAINS NO PROVISIONS CONCERNING NOMINATION
ASSEMBLY CANDIDATES OR VOTING PROCEDURES NOTING THESE WILL BE
DETERMINED BY SSU. STRUCTURE AND ORGANIZATION JUDICIARY APPEAR
UNTOUCHED ON SURFACE, BUT POWERS FOR ADMINISTRATION TRANSFERRED
FROM MINISTER OF JUSTICE TO PRESIDENT. GENERAL VIEW IS THAT

SHIFT IN RESPONSIBILITY IS PLUS.

5. CONSTITUTION LOOPHOLES LEAVE MUCH TO BE INTERPRETED AND MUCH TO BE IMPLEMENTED. CONTINUAL REFERENCES MAY 1969 REVOLUTION MAKE CONSTITUTION SUBJECT INSTANT NEGATION SHOULD ANY GOVERNMENT COME TO POWER BASED ON OPPOSITION NIMAIRI REGIME. ALTHOUGH CONSTITUTION PROVIDES FULL OPPORTUNITY FOR OPPRESSIVE MILITARY RULE, WE BELIEVE THAT, AT LEAST UNDER NIMAIRI, IT WILL BE LEAVENED WITH GOOD MEASURE OF COMMON SENSE AND USUAL SUDANESE RESTRAINT. CERTAINLY, SCOPE FOR OPPRESSION NOT INCREASED FROM PREVIOUS SITUATION OF NO CONSTITUTION.

6. CONSTITUTION HAS BEEN GREETED WITH GREAT OFFICIAL FANFARE, APR 14 WILL BECOME NATIONAL HOLIDAY AND ALL ASSEMBLY DELEGATES TO BE DECORATED WITH NEWLY- MINTED CONSTITUTIONAL MEDAL. NOTWITHSTANDING OFFICIAL HOOPLA, WE SENSE MOST SUDANESE, WHILE PERHAPS GENERALLY PLEASED THAT CONSTITUTIONAL VOID HAS BEEN FILLED, ARE APATHETIC (PERHAPS REFLECTING SKEPTICISM AS TO ITS MEANING IN PRACTICAL TERMS).

7. AIRGRAM ANALYSIS WITH FURTHER ASSESSMENT AS WELL AS TEXTS CONSTITUTION AND PRESIDENT' S SPEECH WILL BE POUCHED IN NEAR FUTURE.

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BANGUI
BEIRUT
JIDDA
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NAIROBI
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RABAT
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CAIRO

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